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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,491	03/16/2004	Dirk Van Dijk	044186.002	1213
25461 7590 04/19/2007 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30307-3592			EXAMINER GILBERT, WILLIAM V	
			ART UNIT	PAPER NUMBER
			3635	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/801,491

Applicant(s)

VAN DIJK ET AL.

Examiner

William V. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,15,30,31,39 and 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,13,14,16-18,22-26,32,37,38,40-42,46-53 and 61-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 03/16/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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DETAILED ACTION

This is a First Action on the Merits. Claims 1-64 are pending. Applicant withdrew Claims 6, 7, 15, 39 and 58. Further, Claims 3-5, 9-12, 19-21, 27-31, 33-36, 43-45, 54-57, 59 and 60 are not examined for reasons set forth below.

Election/Restrictions

1. Applicant's election without traverse of Claims 1-5, 8-14, 16-29, 32-38, 40-57 and 59-64, corresponding to Species III, in the reply filed on 23 March 2007 is acknowledged.

Further, Claims 3-5, 9-12, 19-21, 27-31, 33-36, 43-45, 54-57, 59 and 60 are not examined as being drawn to a non-elected species for reasons below.

Claims 3-5, 9-12, 27-29, 33-36 54-57, 59 and 60: Claims 3, 27 and 54 claim "an opening" on line 2 (line 5 per Claim 54) that corresponds to element 7 in Applicant's specification, which refers to Species I. Claims 4, 5 and 9-12 depend from Claim 3; Claims 28, 29 and 33-36 depend from Claim 27; Claims 55-57, 59 and 60 depend from Claim 54.

Claims 19, 20, 43 and 44: Claims 19 and 43 claim a second wall with grooves that correspond to Species I. Claim 20 depends from Claim 19 and Claim 44 depends from Claim 43.

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Claims 21 and 45: Claims 21 and 45 claim a lower surface in plane with the surface of the second wall that corresponds to Species I.

Claim Objections

2. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1, 2, 8, 13, 14, 16-18, 22-26, 32, 37, 38, 40-42, 46-53 and 61-63 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 9, 12, 13, 15-17, 21, 22, 25-27, 34, 37, 38, 40, 41, 44-46, 49-52, and 60-62 of copending Application No. 11/525536 in view of Davis (U.S. Patent No. 5,818,491).

Regarding Independent Claims 1 and 24: Claims 1 and 24 of the present application read substantially similar to Claims 1 and 25 respectively of the '491 application except that the panel is hollow. Davis discloses a hollow panel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the panel in the present application hollow as in Davis to reduce the overall weight of the panel and it is well known in the art that hollow panels have a greater stiffness than a solid panel.

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Claims 2, 8, 13, 14, 16-18, 22, 23, 25, 26, 32, 37, 38, 40, 41, 46, 47, 49-53 and 61-63 of the present application read substantially similar to Claims 2, 9, 12, 13, 15-17, 21, 22, 26, 27, 34, 36, 37, 39, 40, 44, 45, 46, 49-52 and 60-62 respectively of the '525 application.

Claim 42 is a matter of design choice for the texture of the panel to one of ordinary skill in the art as Applicant did not state a criticality for the necessity of the limitation and the prior art discloses is capable of meeting the limitation.

Claim 48 is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

This is a provisional obviousness-type double patenting rejection.

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Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 13, 14, 16, 22, 23-26, 32, 37, 38, 40, 46-48, 61 and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis (U.S. Patent No. 5,819,491).

Claim 1: Davis discloses a panel (Fig 3: 20) having a hollow profile body with first and second walls (21, 22 respectively), first and second longitudinal edges (35B, 44 respectively), a first longitudinal strip (35A) with at least one hole (Fig. 2: 37), the second edge has space for accommodating an edge of the first strip (Fig. 3: proximate 41), and a second longitudinal strip (24) that extends to a longitudinal wall (35) of an adjacent panel.

Claim 2: a first longitudinal wall (35) adjacent the first edge (35B) and a second longitudinal wall (41) adjacent the second edge (44).

Claims 8 and 32: the second longitudinal strip (24) is at the second longitudinal edge (44).

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Claims 13 and 37: the first longitudinal strip (35A) is provided with a pilot edge (48) at a side that faces a bottom side of the panel.

Claims 14 and 38: the first longitudinal edge, second longitudinal edge and strip form an upwardly opening channel (Fig. 13, generally).

Claims 16 and 40: the first wall (21) has a flat textured surface.

Claims 22 and 46: the first strip near the location of the holes has a protrusion (53) for spacing the strip from the second wall (22).

Claims 23 and 47: the first and second walls (21, 22) are parallel.

Claim 24: Davis discloses a cover profile system with a plurality of flat bodies in mating engagement, each body having first and second walls (21, 22), first and second longitudinal edges (35B, 44), the first edge has a longitudinal strip (35A) with at least one hole (37), the second longitudinal edge has a second strip (24) which is in indirect mating engagement with the side of a first strip and extends over the first strip to an opposite longitudinal wall (35) of the opposite edge.

Claim 25: the cover profile is a walking surface.

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Claim 26: the second strip (24) extends over the first strip (35A) beyond the opposite longitudinal wall (35).

Claim 48: the body is intended for a cover profile system.

Claim 61: the cover system is used as a floor.

Claim 64: Davis discloses a panel with a flat elongated hollow body with first and second walls (21, 22) first and second longitudinal edges (35B, 44), first and second longitudinal strips (35A, 24), the first strip has a hole (37), the second strip has a space (41) for accommodating an edge of an adjacent panel.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 17, 18, 41, 42, 62 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis.

Claims 17, 18, 41 and 42: Davis discloses the claimed limitations except for the dimensions of the grooves. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the limitation because Applicant did not state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation.

Claims 62 and 63: Davis discloses the claimed invention except that the cover profile comprises a wall (Claim 62) or a roof (claim 63). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the panel in Davis in this manner because the panel is intended to be used as a cover and is capable of being used as either a wall or roof.

Claims 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Groh (U.S. Patent No. 6,272,808).

Claims 49 and 53: Davis discloses the claimed invention except the material of the panel is a thermoplastic polymer containing cellulose fibers. Groh discloses a panel made of polymer containing cellulose fibers (Col. 2, lines 65-Col. 3, line 5 per Claim 49), and the polymer is polyvinyl chloride (Col. 2, line 67 per Claim 53). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the materials in Groh with the panel in Davis because the material in Groh is structurally equivalent to the material of the panel in Davis and would perform equally as well.

Claims 50-52: Davis in view of Groh disclose the claimed invention except for the percent content of the cellulose fiber (Claim 50) and the dimensions of the fibers (Claim 51 and 52). It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have these limitations because Applicant did not state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ezumi (U.S. Publication 2003/0056459); Perry (U.S. Patent No. 3,572,224).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG

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13 Apr 07

Paul Kahl
4/13/07